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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 30 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a pastoral assistant. The director determined that the petitioner had not established that the position qualifies as a religious occupation, or that the petitioner is able to pay the beneficiary's proffered wage.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, over 10 months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue in this proceeding concerns the position offered to the beneficiary. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification as a worker in a religious occupation, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Rev [redacted] pastor of the petitioning church, describes the beneficiary's duties:

> As a Pastoral Assistant, [the beneficiary] will lead worship in our services and administer rites. He will assist me planning and coordinating membership drive, new convert's class, water baptism and Holy Communion. [The beneficiary] will

> continue in his ministerial office to preside at weddings, funerals, home and hospital visits, Bible teaching, Christian counseling, prayers and hymn singing.

Subsequent to the director's request for more specific information, Rev [redacted] states that the beneficiary's "weekly activities include discharge of duties as Marriage Officer of the City of New York; headship of our Youth Department . . . ; leading worship in our services and administering rites." Rev [redacted] observes that the beneficiary is "licensed as a minister of the Assemblies of God." The Bylaws of the General Council of the Assemblies of God indicate, at Article VII, Section 1, that "three classifications of ministry are recognized: the ordained minister, the licensed minister, and the certified minister. All ministers holding current ministerial credentials are authorized to perform the ordinances and ceremonies (sacerdotal functions) of the church."

The petitioner has indicated that the beneficiary has, in addition to his work for the petitioner, also engaged in "part-time employment . . . answering the telephones, filing away documents and working along with the accounts payable department of an office." More recent submissions have not indicated any change in this situation. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). The term "continuously" has carried over into the statute now in effect. Thus, the beneficiary's part-time secular employment precludes a finding that the beneficiary qualifies as a minister.

Regarding the job requirements for the position offered to the petitioner, Rev. [redacted] states:

> The criteria for this job offer are primarily spiritual: he has accepted the Lord Jesus Christ as her [sic] personal savior; has been filled with the Holy Spirit with evidence of speaking in other tongues; has manifested the fruits of the spirit as enjoined by scripture; has studied and grown in his knowledge and practice of the word of God. Moreover, he acquired scriptural instruction to become licensed as a minister of the Assemblies of God.

Rev [redacted] assertion that the beneficiary studied to become a licensed minister does not demonstrate that such instruction is necessary to become a pastoral assistant. Subsequently, Rev. [redacted] has stated that the beneficiary's work "requires acquisition of skills acquired in Bible School," and that not every Assemblies of God member enrolls in the Bible School; "we only admit Bible School students who sense a call of God on their lives to full-time ministry." The implication, therefore, is that the job of pastoral assistant is not open to simply any member of the congregation.

The petitioner has submitted excerpts from the most recent revision of the Bylaws of the General Council of the Assemblies of God. The excerpt submitted discusses various forms of ministry, but it does not discuss the duties of a pastoral assistant or the requirements to qualify for that position. The excerpt submitted does not appear to mention pastoral assistants at all. An earlier

letter from Rev [redacted] dated May 9, 1997, indicates "[i]n our Constitution and Bylaws, page 16 Section 2, we describe the duties of a Youth Leader. Please note that the qualifications are not discussed and we at the local level do not possess any printed materials describing the qualifications. However, our standards are basically uniform and [the beneficiary] possesses all the qualifications needed to hold this position." Thus, the petitioner assures us that the beneficiary meets the qualifications, but that the petitioner cannot establish what those qualifications are. The cited section of the Bylaws pertains to an earlier revision; Article IV, Section 2 (on page 16 of the copy submitted) discusses the church's "Youth Department" and indicates "[t]he youth leader shall be chosen by, and amenable to, the senior pastor." As the petitioner has noted, the Bylaws do not specify the qualifications of the youth leader, nor do the Bylaws indicate that the position of youth leader is a full-time, paid occupation rather than an occasional function fulfilled by a volunteer from the congregation.

The indication that the beneficiary is authorized to preside at rites such as weddings and funerals certainly suggests that the beneficiary performs duties that are beyond the authority of dedicated members of the congregation. Even so, the petitioner has not actually submitted documentation to show that the beneficiary has in fact officiated over weddings, funerals, or other such ceremonies, even though records of these occasions would almost certainly be maintained. Furthermore, the record contains no contemporaneous documentation to show that the beneficiary has been or will continue to be employed by the petitioner on a full-time basis.

Rev. [redacted] has indicated that "[u]ntil recently, [the beneficiary's] services were without remuneration." He does not specify how recently the beneficiary remained uncompensated for his services. The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1963).

Apart from the above-cited *Matter of B*, the term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work immediately prior to the filing of the petition, required by 8 C.F.R. § 204.5(m)(1), must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel states that the "beneficiary is an ordained minister of the Assemblies of God." The record indicates that the beneficiary is a *licensed* minister, which is not the same thing as an *ordained* minister according to the denomination's own bylaws. The record does not demonstrate that the beneficiary has in fact carried out the full range of duties reserved for authorized clergy, and the petitioner's discussion of the beneficiary's outside employment indicates that the beneficiary has not been engaged solely and continuously in the vocation of a minister.

Counsel states "[t]he beneficiary is listed [i]n the Assembly of God Minister's Directory. . . . Assemblies of God would not accord him recognition if he was not eligible for the privilege and rights of his status." While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The other basis for denial concerns the petitioner's ability to pay the beneficiary's proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the initial filing, Rev[redacted]states that the beneficiary "is entitled to free room and board and a monthly allowance of $1,200.00." Subsequently, Rev[redacted]has indicated "[t]he Assemblies of God is a worldwide multimillion-dollar religious group. We have annexed Reports certified by a Certified Public Account[ant] . . . to assure you that we do have the requisite income to afford [the beneficiary's] payroll." Information about the Assemblies of God denomination cannot

suffice because the petitioning church is, by itself, a registered corporation. The petitioner has submitted nothing to show that this particular church is free to draw upon the cumulative assets of the denomination as a whole.

The petitioner has submitted an "Accountant's Review Report" which, according to the cover letter by the certified public accountant who prepared it, "is substantially less in scope than an examination in accordance with generally accepted auditing standards." The report shows that the petitioner had $13,866 in net assets as of December 31, 2001, insufficient to pay the beneficiary's yearly salary of $14,400 even without factoring additional costs for food and lodging.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The one piece of financial evidence that the petitioner has submitted indicates, on its face, that the church does not have sufficient funds to pay the beneficiary's salary.

On appeal, counsel does not address this ground for denial except in the general assertion that "[t]he two grounds upon which the application was denied were in fact satisfied by the facts adduced in the sponsorship letters and supporting documentation." This vague contention cannot suffice to establish that the director's specific finding was in error.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.